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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,739	03/13/2001	John Frank	378/9-1541	3863

7590 10/08/2002

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EXAMINER

DONNELLY, JEROME W

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 10/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/808 739

Applicant(s)

Frank

Examiner

J. Donnelly

Group Art Unit

3764

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 7/26/01
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-8 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-8 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Jerome W. Donnelly
Primary Examiner

Office Action Summary

Art Unit: 3700

1. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.
2. Regarding claims 1-8, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3 rejected under 35 U.S.C. 102(b) as being anticipated by Diehl.
Diehl discloses a device comprising a ring (E) mounted on supports (30 and a running ring/rotatable ring (D)

In regard to claim 3 the examiner notes that the upper surface of ring (D) is capable of supporting a person.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diehl.

Art Unit: 3700

Diehl discloses a device as claimed in claim 1 Diehl lower does not disclose his device as claimed in claim 2 and 4 wherein his leg members of different height and his stationary ring is L-shaped.

The examiner however notes that member (E) may be moved up and down and that member (E) may be moved up and down and that member (E) has a horizontal surface and vertical surface (6 and 7).

Given the above teachings the examiner notes that to manufacture members 3 as adjustable and or to manufacture surfaces 6 and 7 as an L-shaped piece are modification which would be recognized in the art as a modification in the art affecting form but not affecting function and as an obvious modification in the art.

7. Claims 5-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the overall climbing device of Nichols, Hall and Rowlands .

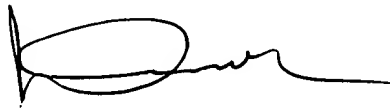
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerome Donnelly whose telephone number is (703) 308-2268. The examiner can normally be reached on Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angie Syyes can be reached on (703) 308-5181. .

Art Unit: 3700

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jerome Donnelly:bhw'
September 27, 2002

A handwritten signature in black ink, appearing to read 'Jerome W. Donnelly', with a stylized, elongated horizontal stroke at the end.

Jerome W. Donnelly
Primary Examiner